

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 98-3663

United States of America,

Appellee,

v.

Deandre Lewis,

Appellant.

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Appeal from the United States
District Court for the Eastern
District of Missouri.

[UNPUBLISHED]

Submitted: November 2, 1999

Filed: November 5, 1999

Before BOWMAN, FAGG, and MURPHY, Circuit Judges.

PER CURIAM.

Deandre Lewis challenges the sentence imposed by the district court after a jury found Lewis guilty of one count of possessing with intent to distribute cocaine base. On appeal, Lewis contends the district court improperly assessed a two-level increase for possession of a firearm, and the government and the district court erroneously shifted the burden of proof to Lewis at sentencing.

First, assuming for the purpose of our review that the shotguns found in Lewis's residence were unloaded, Lewis's residence was being used to distribute drugs, Lewis constructively possessed the firearms by exercising dominion and control over the residence, and a sufficient connection existed between the firearms and the drug offense. See United States v. Newton, 184 F.3d 955, 957 (8th Cir. 1999) (standard of review); United States v. Williams, 10 F.3d 590, 595-96 (8th Cir. 1993); United States v. Overstreet, 5 F.3d 295, 297 (8th Cir. 1993) (per curiam).

Second, although the government misstated the burden of proof during sentencing, the district court's remarks do not suggest it was unaware the government had the burden of proving a connection between Lewis's firearms and his offense. See United States v. Otto, 176 F.3d 416, 418 (8th Cir. 1999) (judges are presumed to know law and to apply it in making their decisions). Aside from Lewis's failure to preserve this issue for appellate review, we are satisfied the district court did not commit error, plain or otherwise.

We affirm Lewis's sentence.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.